THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.12874 OF 2007

DATED 31st JULY, 2007

BETWEEN

Alapaka Krishnaiah

… Petitioner

AND

The Village Panchayat Secretary, Isukapalli (Village),
Venkatachalam (Mandal), Nellore District and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The petitioner is allegedly pattadar and possessor of land admeasuring Acs.0.06 in survey No.1242, Acs.0.12 in survey No.1243 and Acs.0.06 in survey No.1250 situated at Isukapalli (Surveypalli-III) Village of Venkatachalam Mandal in Nellore District. The land is in possession of petitioner for the last thirty years as alleged. First respondent issued notice, dated 12.06.2007, directing petitioner to vacate Acs.0.24 of land in his possession on the ground that he encroached burial ground in the said survey numbers. Aggrieved by the same, present writ petition is filed.

Learned counsel for petitioner strenuously contended that land in survey Nos.1242, 1243 and 1250 in possession of petitioner is not burial ground, and therefore, impugned notice is unsustainable. Secondly, she submits that it is not competent to the first respondent to issue such a notice for eviction of petitioner and under A.P.Land Encroachment Act, 1905. It is only the Tahsildar who can initiate action for eviction. Lastly, she submits that in view of long possession of land with the petitioner, summary proceedings cannot be initiated against petitioner. Reliance is placed on the decision of Supreme Court in **Government of A.P., v Thummala Krishna Rao**[1]. **Opposing** the writ petition, learned standing counsel for Gram Panchayat and learned Assistant Government Pleader for Panchayat Raj relied on Sections 58 and 98 of A.P.Panchayat Raj Act, 1994 (the Act, for brevity) and submit that as petitioner was found to be in occupation of land, which is a burial ground and poramboke, impugned notice was issued and that petitioner without submitting explanation filed present writ petition.

Section 58(1) of the Act declares that porambokes, namely, grazing grounds, threshing floors, burning and burial grounds, cattle stands, carts, tanks and topes vest in Gram Panchayat unless and until they are required

by the Government for any specific purpose. Section 98 of the Act confers power and also casts a duty on Gram Panchayat to remove encroachments in the village. In addition to these provisions, a reading of Sections 85 to 91 of the Act would show that Gram Panchayat is given absolute powers and control to regulate the places used as burial grounds or places licensed as burial grounds. Indeed, under Section 91 of the Act, Gram Panchayat can even prohibit the use of burial grounds, which are overcrowded with graves. In view of all these provisions, it is difficult to accept the submission of learned counsel for petitioner that even if the place is being used as burial ground the Gram Panchayat cannot take action for evicting encroachers and it is only the Mandal Revenue Officer, who takes such action. Insofar as the submission that land is not burial ground, this Court is afraid such a question cannot be considered in a writ petition especially when petitioner has not placed any material before this Court to disprove the contents of the impugned notice that the land in survey Nos.1242, 1243 and 1250 is burial ground.

The writ petition is misconceived and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

31.07.2007.
pln

[1] AIR 1982 SC 1081